

THE ARIZONA *Fiduciary*

VOLUME 12 • NUMBER 2
SPRING 2005

President's Message

By Gregory P. DeVico, President

It seems as though we were just ushering in the New Year and now, we are in the second quarter of 2005. Where does the time go? There are so many pressing and important issues that need to be addressed with so little time!

When the AFA convenes in Flagstaff at the end of June, some very important concepts will be addressed. The theme for the conference is "Call to Action". This coincides with what has been suggested in the past. You may recall, I stated that this year would be a transitional year in which I hoped the AFA would galvanize and become a stronger organization. While the AFA should not, and will not change its focus from education, it should expand the concept of education to include the public's education of what our members really do. It should also address the State Legislators and assist

in laws that affect our members. Lastly, the AFA must be considered an advocate for all fiduciaries in the State of Arizona!

In order to approach these goals, some basic and difficult questions need to be posed to the membership. These questions include:

- Should the AFA become that vehicle to interface with the public and with government?
- If so, how does the AFA become an effective advocate for its members?
- How can the AFA affect the legislative and judiciary branches of government?
- Can the AFA become an effective liaison with the governor's office?

These basic concepts need to be examined and addressed.

What better time to discuss these issues than in Flagstaff at the AFA "Call to Action" Conference?

See you there!

While the AFA should not, and will not change its focus from education, it should expand the concept of education to include the public's education of what our members really do.

THE ARIZONA *Fiduciary*

The Quarterly Newsletter of the Arizona Fiduciaries Association, Inc.—An Affiliate of the National Guardianship Association
Winter 05 – Volume 12, Number 2
Arizona Fiduciaries Association, Inc.
AFA is a non-profit organization whose purpose is to provide structure, guidance, training and continuing education for public and private fiduciaries in Arizona.

AFA Membership
AFA welcomes individual memberships regardless of profession. Annual dues are \$60.00 payable each October 1.

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Have You Moved?

Have you recently moved or changed jobs, changed your phone number, email address, etc.? If so, we would like to hear from you so that we may keep a current database of AFA members. Please send your new information to:

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Certified Fiduciary Svcs., Inc.
P.O. Box 1892
Sun City, Arizona 85372-1892
(623) 977-6310
E-Mail: pjohnston@cfssuncity.com

The Toughest Job You Will Ever...

By Roger Coventry, Deputy Public Fiduciary, Maricopa County

Saturday, July 24, 2004, a young woman leaves her life behind to begin orientation for an upcoming assignment in Ouagadougou (the capital of Burkina Faso) "the land of the upright/honorable people." This area of Africa is ravaged by poverty and HIV/AIDS. She has embarked on a life-changing journey. Her mission: to promote HIV/AIDS awareness in her new role as a Peace Corps volunteer. She will touch many lives and may have already touched yours—her name is Sara Branscum.

Many Arizona fiduciaries have been in contact with Sara Branscum. She was the Assistant Attorney General responsible for the revenues collected through escheatment to the state of Arizona. Far from being the "typical" government employee, Sara was known as a friendly voice of reason in the web of bureaucracy that fiduciaries often encounter. Although casual acquaintances may not have expected such a life-changing decision, fellow "Chamber Singers" and bicycle team cohorts are not surprised.

Sara has been able to keep her friends and loved-ones apprised of her situation through a web site <http://www.sarabranscum.com>, which archives many fascinating letters she has authored and a guestbook, amongst other features.

In a letter, dated November 13, 2004 Sara relates her astonishment at the conditions surrounding birth in the region. *"One of the babies was born with 6 fingers on each hand. I'm told this happens with between 1-2 % of babies (so 2-3 babies a year at my clinic). So the midwife took a couple of pieces of string and just tied the extra fingers off real tight. She said they'd fall off in a week or so. I almost threw up. Incredible."*

For those of us left in the relative comfort of Arizona, a visit to her web site will allow a few moments of living vicariously through a woman who is a long way from home. Like us, Sara was a fiduciary in her capacity for the state—but, more importantly she has reflected the caring and commitment shared by Arizona fiduciaries through her humanitarian efforts in a distant land. I encourage you all to visit her web site, read about her experiences and show your appreciation for how she has made a difference in this world.

Fiduciaries may want to take note of the person who has taken Sara's place at the Arizona Attorney General's Office: David Dir, Esq., Assistant Attorney General, Office of the Attorney General, Tax, Bankruptcy and Collections, 1275 West Washington, Phoenix, AZ 85007.

Update On Fiduciary Certification

Our next fiduciary certification renewal date is May 31, 2006.

Twenty (20) hours of continuing education will be required for those fiduciaries seeking renewal.

Note: For the 2006 renewal process fiduciaries will be able to renew on-line.

The next two fiduciary certification exams will be held on **July 22, 2005** (deadline for examination application June 1, 2005) and **October 28, 2005** (deadline for examination application September 9, 2005).

More information is available on the Fiduciary Certification Program's website: www.supreme.state.az.us/fiduc

Calendar Of Training Events

M A Y 19 - 22

National Academy of Elder Law Attorneys Symposium

San Francisco

Contact: Kellen Company (520)881-6561

J U N E 15

Probate & Trust Section, State Bar of Arizona Convention,

Annual Meeting, 1 pm., Westin Hotel, Tucson;

Contact: Teri.Yeates@staff.azbar.org

J U N E 17

Mental Health and Elder Law Section, State Bar of Arizona Seminar:

State Bar Convention Program, Protecting the Incapacitated in Litigation Rights, Responsibilities and Conflicts in Civil and Criminal Cases, Westin La Paloma, Tucson;

Contact: Teri.Yeates@staff.azbar.org

J U N E 30 / J U L Y 1

AFA Training Conference, Call to Action

Flagstaff, AZ

S E P T . 29 - O C T . 2

NAELA/Geriatric Care Managers Joint Conference

New Orleans

Contact: Kellen Company (520)881-6561

S E P T . 30

Probate & Trust Section, State Bar of Arizona,

“Asset Protection in Arizona”; national speakers include Duncan Osborn, Skip Fox and Jack Terrell; program consists of ethics and fraudulent conveyance issues, and the use of LLC’s and LLP’s, onshore trusts and offshore trusts to protect assets from creditor claims.

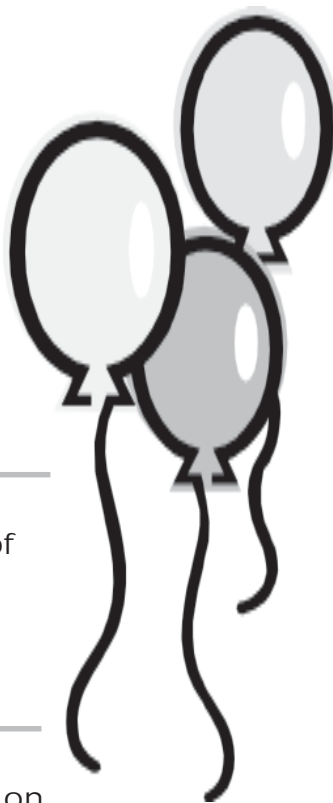
Contact: Teri.Yeates@staff.azbar.org

N O V . 5 - 9

National Guardianship Association Annual Conference

Cleveland

Contact: Kellen Company (520)881-6561



What Kind Of A “Tator” Are You?

Anonymous Author

People are like potatoes. . .

There are those who are content to watch while others think and work. They are called “Spec Tators”.

Some never help but are gifted at finding fault and telling others what to do. They are called “Comment Tators”.

There are people who cause problems by wanting others to agree with them that it is too hot, too cold, too sour or too sweet. They are called “Agi Tators”.

Then there are people who say they will help, but somehow they never get around to it. They are called “Hezzie Tators”.

There are some people who pretend to be what they are not. They are called “Emma Tators”.

Some people are bossy and like to be in control. They are called “Dick Tators”.

Then there are those who smile and do what they say they will do. They are always prepared to lend a helping hand. They bring real sunshine into the lives of others and they make work and life flow more smoothly. They are called “Sweet Tators”.

Think about it and resolve to make a contribution to your profession.





Principles of Fiduciary Practice

J. Gary Noviello, CPA

As you are aware, the Arizona Supreme Court is no longer providing initial training for fiduciary certification. In addition, the rules for taking the certification examination and obtaining fiduciary certification have recently changed. To now sit for the certification examination applicants must meet a combination of certain predetermined eligibility and work experience requirements.

I am pleased to announce that Phoenix College now offers fiduciary training. I have been employed by the college as an adjunct faculty since the program began in the Fall 2004 semester to teach a class on basic principles of fiduciary practice. The class is a one-credit college level course held over three consecutive Saturdays, currently once during the Spring semester and once during the Fall semester. The next scheduled class will be held on the three Saturdays, October 8 through October 22, from 8:00 a.m. to 1:30 p.m. Tuition and fees for the Fall class will be \$85 for residents of Maricopa County; residents of other Arizona counties can apply for a waiver of out of county fees. The \$85 includes all related course materials. Registration has already begun for the Fall class. For those interested in registering, the course is FPA101 and the section number is 8701.

The course examines the foundations and requirements for fiduciary practice in Arizona, including certification, and provides an introduction to topics such as probate, ethics, decision making, care management, accounting, and office practices. Emphasis is placed on ethical and professional practices.

The basic course competencies follow:

1. Explain and illustrate terminology and basic principles associated with fiduciary requirements and practice in Arizona.
2. Identify and explain the importance of available resources and sources of information in a variety of fiduciary practice settings.
3. Identify, describe, and explain basic principles associated with and mechanisms for property control.
4. Identify, locate, and describe legal requirements as they pertain to fiduciary practice in Arizona.
5. Identify, describe, and illustrate professional behavior with respect to fiduciary practice including recognition of personal limitations and interaction with stakeholders.
6. Examine and critique sample policies, procedures, instruments, and documents associated with effective practice.
7. Identify and explain likely

consequences of acts of omission and commission associated with fiduciary practice and recommend alternative and/or subsequent action.

8. Prioritize steps in caring for and protecting clients and their assets and explain likely effects.
9. Examine and critique plans for the care and protection of clients and their assets.
10. Examine information and documents to construct client histories and to manage an estate.

In addition to the basic course, Phoenix College is currently developing a practicum to provide candidates with field experience in fiduciary practice. The practicum entails working under the supervision of an Arizona certified fiduciary or other professional in accordance with Arizona certification requirements (Arizona Code of Judicial Administration) to obtain experience in guardianship, conservatorship, and/or personal representative duties. The practicum will provide up to three college credits. To determine if your organization may qualify to become a practicum placement site, please contact Rose Pfefferbaum at (602) 285-7587.

Next on the horizon are plans to pursue an online version of the course. The college will also begin exploring additional training for conservators, guardians, and personal representatives.

For more information, please visit the Phoenix College website at www.pc.maricopa.edu or call (602) 285-7193.

The course examines the foundations and requirements for fiduciary practice in Arizona, including certification, and provides an introduction to topics such as probate, ethics, decision making, care management, accounting, and office practices.

Fiduciary Certification Programs Cites 5 Most Common Fiduciary Audit Findings

*By Patricia Ian, Yavapai County Public Fiduciary,
Member of Fiduciary Advisory Commission*

A visit to the Fiduciary Certification Program website <http://www.supreme.state.az.us/fiduc/> will provide you with the following 5 most common fiduciary audit findings as of December, 2004:

- 1) **Required court case filings are late.** These include the inventory and appraisal, annual accounting and report of guardian. These filings are required pursuant to Arizona Revised Statutes, Sections 14-3706, 14-5418(A) and 14-5419(A). Reference is also made to ACJA Sec. 7-202, Code of Conduct (2)(e). This deficiency can be remedied by a good calendaring system. If you don't have one, send out an email on the AFA listserve, and you'll receive a number of good suggestions.
- 2) **Required court case filings are not accurate.** These include the same filings as stated above. The fiduciary responsibility for accuracy is dictated by the Code of Conduct, (2)(f), (4)(j) and (5)(h). A remedy for this finding requires attention to detail, as well as thorough research techniques and good forms for compiling and retrieving data.
- 3) **Fiduciary actions and decision making are not documented.** The cite given to support this responsibility is A.R.S. Section 14-5418(B): ".....The conservator shall keep suitable records of the conservator's administration and exhibit the records on request of any interested party." This seems like a bit of a stretch as support for such a finding. The Code of Conduct has many references as to the fiduciary's responsibility for good decision making, but there is actually no reference to documentation of the

decision making process. However, fiduciaries are well aware that we are urged to document, document, document all of our decisions and actions with regard to our wards. It is ultimately the best protection against complaints.

- 4) **Business and Fiduciary certification numbers are not used on court documents.** This requirement is set forth in the Administrative Code (ACJA 7-202(F)(5)) governing fiduciaries. It is a relatively easy violation to remedy. I presume we all use templates for court documents, so it is simply a matter of incorporating the certification number(s) into the templates.

- 5) **Fiduciary did not competently manage their client caseload.** The cite for this responsibility is given as ACJA 7-202, Standard 4. This particular standard refers to Conservatorships and states that "The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate." The Code then states the primary responsibilities of the fiduciary in the exercise of competent management.

The purpose of this article is neither to defend nor criticize the audits, but to remind fiduciaries that there is a Code of Conduct that must be followed as long as it is in effect. A thorough knowledge and understanding of the Code is the best defense against complaints that can be substantiated. The Code can be downloaded from the Fiduciary Certification Program's website listed above.

The next meeting of the Fiduciary Advisory Commission is Friday, May 13, 2005 at 2:00 p.m. at the Superior Court of Maricopa County Probate Court in Phoenix, 125 W. Washington St., 6th Floor in the East Conference Room

Have you Ordered Your "What Is A Fiduciary" Booklets Yet?

This is the booklet AFA has produced for several years for the general public. It describes the work and services provided by Arizona's fiduciaries.

Copies of the new Third Edition of the booklet are available for distribution and feature a "Compliments Of" box on the back cover, where you can stamp the name of your firm for a bit of advertising.

If you are a for-profit business, the price is 50 cents per booklet to cover our printed costs, plus \$5.00 for shipping and handling. If you are a public agency or non-profit organization, booklets are available at no cost to you.

To order, if you are a government or non-profit agency, e-mail or mail your request to Allan Rouse and your order will appear in your mailbox. If you are a for-profit business, mail your order to Allan with check made out to "AFA."



SEND REQUESTS AND PAYMENTS TO:

Allan Rouse / PROBATE RESEARCH
PO Box 10453 / Glendale, AZ 85318-0453
Phone: 623-434-0330
allanrouse@cox.net

AFA Call To Action!! Summer Conference 2005

Greetings AFA Members!

The **AFA Summer Conference 2005** will be hosted in beautiful Flagstaff, Arizona at the Woodlands Radisson Hotel on Thursday, June 30, 2005 and Friday, July 1, 2005. This year's program promises to be exceptional. The keynote speaker will be William H. Colby, former attorney for the family of Nancy Cruzan and author of the *Long Goodbye: The Deaths of Nancy Cruzan*. Mr. Colby will be presenting at the 1:30 p.m. session on June 30, 2005. Those who heard him speak at the National Guardianship Association Conference in Colorado Springs last fall will tell you – "Don't miss this!"

Conference registration will begin at noon on Thursday, June 30th with the conference kickoff scheduled for 1:00 P.M.

Excerpts from an Article from **LIGHTENING Bolts** by Ronald P. Culberson, MSW, CSP October 2004

In 1983, 25-year-old Nancy Cruzan was involved in a car accident that left her in a persistent vegetative state kept alive by feeding tubes. Her parents spent five years trying to bring her back to consciousness with no success. Finally, after accepting that her condition would not improve, they began a legal battle to have the feeding tubes removed an action they were certain their daughter would have wanted.

Bill Colby was the Cruzan family's lawyer who took on the case as a public service. He moved the case

through the state court system and ultimately to the U.S. Supreme Court where the Cruzan's won the right to remove Nancy's feeding tubes. Seven years after her accident, Nancy was allowed to die with dignity. The Cruzan family's ordeal is chronicled in Bill Colby's book, "Long Goodbye: The Deaths of Nancy Cruzan".

Helena Yazzi, Coconino County Public Fiduciary and her staff, are the hosts for the conference. The AFA Board is honored to bring you a conference that has a nice blend of general and break out

sessions with programs designed to meet the needs of all members. Topics will include, fiduciary tax issues, end of life decision making and special needs trusts.. Alisa Gray and Greg DeVico will be facilitating a panel discussion with other licensing entities to help our members gain an understanding of licensing/licensee protocols. The Friday morning session, entitled "Fiduciary Call to Action", will provide an opportunity for an interactive discussion about the impact of the AOC certification program on our members and our industry. The Friday morning session will focus on identifying key issues, and the Friday afternoon session will focus on solutions for the individual fiduciary and for our industry as a whole.

Once again the AFA Board has worked diligently to keep the conference fees reasonable in the hope that many fiduciaries will bring their team members and fellow associates. The two-day rate

will be \$125 and the one day rate will be \$75 (you pick the day). Please make your room reservations as soon as possible as we anticipate a record attendance for this conference. We hope to see you there! Flagstaff offers a comfortable summer climate with vistas to warm the soul. Community events that will be happening during or following the conference are:

50th Annual Coconino County Horse Races

July 1 – July 4, 2005
1:00 P.M Post time daily
Fort Tuthill Downs
\$3.00 Adults, \$2.00 Children (6 -12)
(928) 774-5139
www.co.coconino.az.us/parks

Be part of the excitement! A Flagstaff 4th of July Tradition, celebrating 50 years of live Thoroughbred and Quarter Horse Racing.

72nd Hopi Festival of Arts and Culture

July 2 – July 3, 2005
Museum of Northern Arizona, 3101 N. Fort Valley Road
(928) 774-5211
www.musnaz.org

The oldest Hopi show in the world, this festival celebrates the rich artistic culture and traditions from the Hopi mesas of northeastern Arizona. This year's focus is on Hopi weaving, a diminishing art form, and one of the oldest and least often taught arts. Recognizing this decline, MNA is highlighting all forms of Hopi textile weaving, including belts, sashes, blankets, and clothing. Juried weaving awards, demonstrations, and discussions help to breathe new life into this ancient tradition. Enjoy the renowned Hopi handmade arts of katsina doll carving, pottery, painting, and silver overlay jewelry against a backdrop of storytelling, music, dancing, and steaming piki. Learn about the Hopi values of humility, cooperation, respect, balance, and earth stewardship. Nature lovers can take a hike with a Hopi medicine woman along the Museum's Rio de Flag Nature Trail to learn the many uses of regional plants.

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Flagstaff Activities
www.flagstaffarizona.org

Grand Canyon Deer Farm
deerfrmr@aol.com

Grand Canyon Railroad
info@thetrain.com

American Dream Grand
Canyon Tours
888-203-1212

Open Road Tours and
Transport
800-766-7117

Museum Of Northern Arizona
3101 N Fort Valley Rd., Flagstaff 86001
928-774-5211

Pioneer Musuem
Highway 180, Flagstaff 86001
928-774-6272

Charly's Pub & Grill
23 N Leroux St., Flagstaff 86001
928-214-7363

Collin's Irish Pub
2 N Leroux St., Flagstaff 86001
928-214-7363

Flagstaff Brewing Company
16 E Route 66, Flagstaff 86001
928-773-1442

Hotel Monte Vista
100 N San Francisco St, Flagstaff 86001
928-779-6971

Maloney's
101 N Leroux, Flagstaff 86001
928-214-9519

Mogollan Brewing Company
15 N Agassaz St, Flagstaff 86001
928-773-8950

San Felipe's Cantina
103 N Leroux St., Flagstaff 86001
928-779-6000

The Museum Club
3404 E Route 66, Flagstaff 86001
928-526-9434

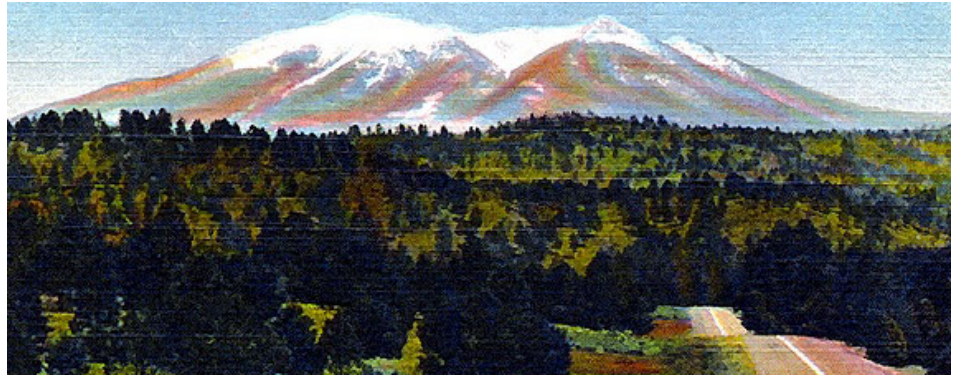
Meteor Crater
PO Box 70, Flagstaff 86001
928-289-2598

Sunset Crater National
Monument
Route 3 Box 149, Flagstaff 86001
928-714-0565

Vertical Relief Climbing Center
205 S San Francisco St, Flagstaff 86001
928-556-9909

Walnut Canyon National
Monument
Walnut Canyon Road #3, Flagstaff 86001
928-527-0246

Wupatki National Monument
HC Box 444A, Flagstaff 86001
928-679-2365



AFA Summer Conference 2005

Radisson Woodlands Hotel in Flagstaff, AZ

June 30, 2005 and July 1, 2005

Here's the postcard you will be sending following your attendance at the summer AFA Conference to be hosted by Helena Yazzie, Coconino County Public Fiduciary in cool and beautiful Flagstaff, Arizona. Come join us for the "Fiduciary Call to Action" beginning on June 30, 2005 at the Radisson Woodlands Hotel, 1175 West Route 66, Flagstaff, AZ 86001. Call for reservations - (800) 333-3333. Alternate Hotel accommodations at La Quinta, 2014 South Beulah Blvd., Flagstaff, AZ 86001. Call for reservations - (800) 531-5900 Conference Room Rate - \$67.00 (rate guaranteed for reservations made prior to June 9, 2005).

AFA CONFERENCE REGISTRATION FORM

Conference Fee:

- ☐ \$125.00 (2-day)
☐ \$75.00 (1-day)

Conference CEU/CLE's Total 8.25

Name: _____

Title: _____

Phone: _____

Email: _____

Meals included in the Conference Fee for Friday, July 1st
(breakfast & lunch)

Friday Lunch Mixed Grills Entrée Choices: Select one choice below:

- ☐ Beef Sirloin & Grilled Salmon
☐ Grilled Shrimp and Grilled Chicken
☐ Vegetarian

Please make your check payable to the Arizona Fiduciaries Association and mail to: Roger Coventry, MCPF Deputy Public Fiduciary (AFA Treasurer), C/O MCPF, 111 West Monroe St. Suite #500, Phoenix, AZ 85003

Arizona Fiduciaries Association, Inc.

An Affiliate of the National
Guardianship Association

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